IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.13508 of 2001

The Chief Engineer - Personnel
Tamil Nadu Electricity Board
NPKRR Maaligai
800 Anna Salai
Chennai - 600 002 Petitioner

vs.

1 The Presiding Officer
Labour Court
Cuddalore

2 R. Suriyanarayanan Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records of the first respondent Labour Court relating to its award dated 19.6.2000 passed in I.D.No.577/92 and quash the same as stated therein.

For petitioner Mr. M. Vaidyanathan

For 2nd respondent Mr. K.V. A.Subramanian, Sr. Counsel
for Mr. M. Abdul Wahab

O R D E R

This writ petition has been filed seeking a writ of certiorari to call for the records of the first respondent Labour Court relating to its award dated 19.06.2000 passed in I.D. No.577 of 1992 and to quash the same.

2. Earlier, the second respondent, a dropout in S.S.L.C. examination, was employed in Kumbakonam Electrical Undertaking and consequent to the petitioner Board taking over Kumbakonam Electrical Undertaking, he was absorbed in the petitioner Board against equivalent post. Since the minimum general educational qualification prescribed for the post of Junior Assistant in the petitioner Board was relaxed vide Per. B.P.Ms.No.910 dated 25.05.1979, the second respondent was absorbed as Junior Assistant in the petitioner Board with effect from 07.01.1974. The relaxation of minimum general educational qualification is only for his absorption in the petitioner Board and not for his promotion as Assistant for which he is required to possess the minimum general educational qualification besides passing Accounts

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Test for S.O. Part I as per Regulation 94 and 96(1) of the Tamil Nadu Electricity Board Service Regulations.

3. The second respondent made two representations to the petitioner Board seeking exemption from possessing minimum general educational qualification for his promotion to the post of Assistant; but the same were turned down advising him to qualify himself.

4. With his attempts yielding no positive result, the second respondent approached the first respondent Labour Court praying for promotion as Assistant with effect from 1982 by exempting him from possessing the minimum general educational qualification and also consequent back-wages from 10.06.1982. Before the Labour Court, the second respondent's main contention was that the relaxation afforded to him at the time of his absorption as Junior Assistant would hold good for promotion to the post of Assistant also.

5. In the counter filed by the petitioner herein, it was contended that the second respondent herein was promoted as Assistant on 05.05.1992 based on relaxation of educational qualification made vide B.P.Ch.212 (SB) dated 06.08.1991 and as such, his claim for promotion and back-wages with effect from 1982 is not tenable.

6. Before the first respondent Labour Court, the second respondent herein, besides examining himself as a witness, has marked ten exhibits. On the side of the petitioner Board herein, eight exhibits have been marked and no witness has been examined.

7. Aggrieved by the order of the first respondent Labour Court in allowing the case of the second respondent herein with regard to both promotion and back-wages, the petitioner Board has filed the present writ petition.

8. In his counter, the second respondent has stated that when it is the case of the petitioner Board that the relaxation of educational qualification in respect of Junior Assistants who were absorbed would be valid for promotions upto the post of Accountant, it cannot deny the petitioner's promotion to the post of Assistant. It is the further contention of the second respondent that the first respondent Labour Court has rightly taken into consideration all aspects of the matter while allowing his case and hence, the order under challenge does not warrant any sort of interference.

9. Mr. M. Vaidyanathan, learned counsel for the petitioner Board has contended that the second respondent's claim for promotion on par with Cashiers who were promoted as Sub-Inspector of Cashiers even though they were unqualified, cannot be entertained on the ground that they were given relaxation of the educational qualification for the second time vide B.P.Ms.(Ch) No.669 dated 28.12.1983. He has further contended that since B.P. No.212 relaxing the minimum general educational qualification for the second time was passed only on 06.08.1991, the petitioner's claim for promotion with effect from 1982 does not have legs to stand.

10. Mr. Vaidyanathan has further contended that when the second respondent has not challenged the rejection of his representations

https://hcservices.ecourts.gov.in/hcservices/

which were based on B.P. Ms. No.959 dated 26.08.1958, the said rejection becomes final and in such circumstances, the first respondent Labour Court has erred in ordering promotion to the petitioner from the year 1982.

11. In support of his arguments, the counsel for the petitioner Board had relied on a Division Bench judgment of this Court reported in 1982 MLJ 294 in the matter of The Government of Tamil Nadu represented by Secretary to Government, Commercial Taxes and Religious Endowment Department, Madras-9 & another vs. M.N. Raghunathan and the relevant portion reads as under: (para 2)

> "According to the learned Government Pleader, the exemption granted will enure only to the post of the Assistant and if the respondent has to be promoted as the Superintendent, he has to qualify himself by passing the prescribed tests for the said post, that is, parts I and III of the Revenue Test apart from the other qualifications required for the same."

12. Per contra, Mr. K.V. Subramanian, learned Senior Counsel appearing for the second respondent, during the course of his arguments, has pointed out B.P. Ms.No.959 dated 26.08.1958 wherein the Board had approved promotion of absorbed employees to higher posts without insistence on minimum general educational qualification, provided they are otherwise suitable for promotion. It is also his strenuous contention that when the petitioner Electricity Board could have promoted the second respondent based on the said proceedings with effect from 1982, the stand taken by it that the second respondent is not eligible for promotion and back-wages from 1982 as per B.P. Ch.212 (SB) dated 06.08.1991 is untenable and the Labour Court is very much correct in ordering promotion and back wages with effect from 1982.

13. The counsel for the second respondent too has placed reliance on the judgment reported in 1982 MLJ 294 on by the counsel for the petitioner Board and the relevant portion reads as under: (para 8)

> "We are clearly of opinion that when the exemption was granted, the authorities had taken into consideration his experience and capacity and then only such exemption was granted on merits which exemption must be deemed to have exempted the respondent fully from passing the Revenue Tests Parts I and III for any post which requires such qualification, in the said Department. A reading of the G.O. Ms.No.2247, Revenue would further indicate that exemption granted in favour of the respondent from passing the Revenue Tests, parts I and III is with immediate effect and for all purposes though in order to enable him to be appointed as an Assistant in the Board of Revenue immediately."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

14. Heard both sides.

15. Admittedly, the second respondent is a drop-out in S.S.L.C. Examination. Yet, he has been absorbed in the petitioner Board as Junior Assistant vide Per.B.P. Ms.No.910 dated 25.05.1979 by which the minimum general educational qualification was relaxed. Of course, from Ex.A.4 marked before the Labour Court, it is clear that he had cleared the departmental test in the year 1981.

16. The points which arise now for consideration in this petition are whether the relaxation given to the second respondent vide Per. B.P. Ms.No.910 for absorption as Junior Assistant shall be valid for his promotion as Assistant as well and whether the Labour Court is justified in ordering promotion with effect from 1982 and consequent back-wages.

17. The foremost contention made by the counsel for the petitioner Board is that the second respondent was promoted in the year 1992 based on (Per) B.P.(Ch.) No.212 and as such, he cannot be promoted from the year 1982. On the other hand, it is the strenuous contention of the Senior Counsel appearing for the second respondent that the first respondent Labour Court has rightly taken into consideration B.P. Ms.No.959 dated 26.08.1958 while ordering promotion for the second respondent with effect from 1982 and also consequent back-wages.

18. With the above background, let me proceed to consider whether the first respondent Labour Court is correct in promoting the second respondent with effect from 1982 with back-wages.

19. From a perusal of Ex.A.5, B.P. Ms.No.959 dated 26.08.1958, it is seen that the petitioner Board, in the case of employees absorbed by it, has ordered that such absorbed employees need not be insisted upon acquisition of minimum general educational qualification for promotion to higher posts, provided they are otherwise suitable for promotion. Of course, the petitioner Board has given such a relaxation on condition that promotion in such a case shall be subject to merit and ability and also such relaxation shall not be applicable for the post higher than that of Accountant.

20. From B.P. Ms.No.42 of the petitioner Board which has been marked as Ex.A.8 before the Labour Court, it is seen that one S.P. Ramu has been exempted by it from acquiring minimum general educational qualification enabling his promotion to the post of Assistant. Similarly, from B.P. Ms.(Ch.) No.669 dated 28.12.1983, marked as Ex.A.9, it is seen that two employees by name Arunachalam and Srinivasaraghavan who were employed as Cashiers were exempted from acquiring minimum general educational qualification for their promotion to the post of Sub-Inspector of Cashiers with effect from 1977.

21. Thus, when the fact remains that the petitioner Board had promoted several of its employes as enumerated above without insistence on minimum general educational qualification and the second respondent has passed the departmental test in the year 1981 and when there is also B.P.Ms.No.959 dated 26.08.1958 wherein the Board had approved promotion of its absorbed employees till the post of Accountant, without insistence on minimum general educational qualification, this Court is unable to find any valid reason as to why the petitioner

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Electricity Board did insist on the second respondent alone for qualifying himself for promotion to the post of Assistant from the post of Junior Assistant and thereby, denying him, his due promotion.

22. A perusal of the impugned order makes it clear that the first respondent Labour Court has given due consideration to the exhibits which were marked before it, particularly, B.P. Ms.No.959 dated 26.08.1958 which exempts the absorbed employees of the petitioner Board from acquiring the minimum general educational qualification, and has discussed the same elaborately, before concluding that the second respondent is entitled to be promoted as Assistant from 22.06.1982 with backwages.

23. As for the reliance made by the counsel for the petitioner Board on the Division Bench judgment of this Court, it cannot be taken into consideration on the ground that the relevant paragraph relied on by him is only the argument of the counsel for the appellant and not the finding of the Bench. In fact, the Bench has dismissed the appeal.

24. Admittedly, the second respondent has been initially appointed in Kumbakonam Electrical Undertaking and subsequently, absorbed in the petitioner Board against equivalent post. This background for granting exemption from possessing minimum general educational qualification for his promotion during the relevant period of time is a point to be reckoned with in the light of the Board Proceedings relaxing the minimum general educational qualification upto the post of Accountant. When it is a fact that the benefit of relaxation of minimum general educational qualification has been given to certain persons by way of individual Board Proceedings, the first respondent Labour Court has rightly taken cognizance of all these aspects while arriving at its findings and in that view of the matter, when the impugned order is not infirmed in any manner, I find no reason to interfere with the same.

In view of the discussion made above, the order under challenge passed by the first respondent Labour Court is upheld. Consequently, this writ petition which is devoid of any merit is dismissed without any order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

cad

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

The Presiding Officer
Labour Court
Cuddalore

+1cc to Mr.M.A.Abdul Wahab, Advocate SR 17347
+1cc to Mr.M.Vaidyanathan,Advocate Sr 17021

VC (CO)
km/28.3.

W.P. No.13508 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/